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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 United States of America,) No. CV 11-13-TUC-RCC
10 Plaintiff,) No. CR 05-1419-TUC-RCC (CRP)
11 vs.) **ORDER**
12)
13 Luis Enrique Garibay,)
14 Defendant/Movant.)
15 _____)
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17 On January 6, 2011, Movant Luis Enrique Garibay, who is confined in the United
18 States Penitentiary in Atwater, California, filed a *pro se* Motion to Vacate, Set Aside, or
19 Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255. (Doc. 1).
20 The government filed its response but failed to address the issue of procedural default raised
21 in Petitioner's opening brief. (Doc. 14; Doc. 4 at 10). The government also did not secure
22 the affidavit of Petitioner's trial counsel in response to Petitioner's ineffective assistance of
23 counsel claims. See Bittaker v. Woodford, 331 F.3d 715, 716 (9th Cir. 2003); Wharton v.
24 Calderon, 127 F.3d 1201, 1203 (9th Cir. 1997). Accordingly,

25 **IT IS ORDERED** that the government shall file a memorandum addressing the issue
26 of procedural default on or before **November 4, 2011**. Petitioner shall file his response **14**
27 **days** after the government files its memorandum. No reply brief will be permitted.

28 **IT IS FURTHER ORDERED** that Petitioner's trial counsel, Geoffrey Cheshire, shall

1 provide an affidavit to the government responding to Petitioner's ineffective assistance of
2 counsel claims on or before **November 4, 2011**.

3 **IT IS FURTHER ORDERED** that the government may file a supplemental response
4 to the Petition based on attorney Cheshire's affidavit no later than **November 18, 2011**.
5 Petitioner shall file his reply **14 days** after the government files its supplemental response.

6 **IT IS FURTHER ORDERED** the Clerk of Court shall serve a copy of this order on
7 attorney Geoffrey Cheshire, Federal Public Defender, 407 W. Congress Street, Suite 501,
8 Tucson, AZ 85701-1310.

9 DATED this 5th day of October, 2011.

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A handwritten signature in black ink, appearing to read "R. Collins", is written over a horizontal line.

Raner C. Collins
United States District Judge